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## Agenda Item 3a

December 13, 2011

### TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. **SUBJECT:** State Legislative Proposal: Minor Policy and Technical Amendments to the Public Employees' Retirement Law (PERL)
- II. **PROGRAM:** Legislation
- III. **RECOMMENDATION:** Staff recommends that the Board **sponsor** legislation to make the following minor policy and technical amendments to sections of the Government Code administered by CalPERS.

#### IV. ANALYSIS:

This proposal would make several changes to various provisions of the PERL identified by staff as necessary for the maintenance and good governance of CalPERS, and to ensure that its statutes are clear.

Specifically, this proposal would address the following issues:

#### **Clarify Statutory Authority to Terminate a Contract when Contracting Agency No Longer Meets the Definition of a Public Agency**

Existing law authorizes public agencies to contract with CalPERS for the purpose of providing retirement and survivor benefits for their eligible employees. It defines "public agency" as "*any city, county, district, other local authority or public body of or within this state.*" In addition, existing law lists numerous other entities and organizations that, through legislation, have been deemed public agencies for purposes of contracting with CalPERS for retirement and survivor benefits.

Under existing law, the Board can terminate the contract of a contracting agency for any one of three reasons: (1) the contracting agency fails for 30 days after demand by the Board to pay any installment of contributions required by its contract, (2) the contracting agency fails for three months after demand by the Board to file any information required in the administration of this system with respect to that agency's employees, or (3) if the Board determines that the agency is no longer in existence. In addition, since CalPERS is only empowered to contract with entities that qualify as public agencies, the Board has the implied

authority to terminate a contract when a contracting agency no longer qualifies as a public agency under either Government Code (GC) Section 20056 or Section 20057.

Contracting agencies that no longer meet the definition of “public agency” and that, therefore, no longer have the right to contract with CalPERS for retirement and survivor benefits create a potential risk to the system.

This proposal would grant the Board the express statutory authority to terminate the contract of a contracting agency that has ceased to meet the definition of a “public agency” under existing state law. Affected contracting agencies would generally be allowed to petition the Board to reconsider its decision through existing administrative appeals procedures, and to present evidence supporting their public agency status. Upon termination of their contract with CalPERS, terminated agencies would be required to make contributions to the system necessary to cover any amount the system is obligated to pay after the effective date of the contract termination to or on account of persons who are or have been employed by, and on account of service rendered by them to, the agency. The implementation of this proposal will be subject to compliance with Internal Revenue Service regulations and guidance regarding governmental plans.

Providing specific statutory authority to the Board to terminate its contracts when a contracting agency no longer qualifies as a public agency under existing law will limit the likelihood that the Board’s authority to terminate a contract will be challenged in court.

### **Standardize Eligibility for Service Credit Purchases of Disability-Related Leave**

Existing law allows a CalPERS member on an employer-approved, unpaid leave of absence, due to work-related temporary disability or the member’s own serious illness, to purchase retirement service credit for this time spent away from work. This proposal would add “or injury” to the following Government Code (GC) sections:

- Leave for Temporary Disability (GC 21004)
- Leave for Serious Illness (GC 21002)

Various provisions of the PERL relating to benefits for members experiencing a work-related disability have been conditioned on the member suffering some form of illness or injury. However, as these statutes were amended over the years, the phrase “or injury” was inadvertently omitted from a section of the PERL that authorizes service credit purchases for a work-related temporary

disability. Because worker's compensation insurers determine employees' eligibility for temporary disability benefits and do not differentiate between "illness" or "injury," CalPERS' receipt of certification that the member was on an approved leave and receiving worker's compensation benefits is sufficient to verify eligibility for Temporary Disability Leave.

In 2008, GC Section 21002 was added to the PERL, stating that CalPERS members can purchase, at their own cost (including both member and employer contributions), service credit for an employer-approved leave caused by the member's own non-work related serious illness. "A member who returns to active service following...leave of absence because of his or her serious illness may purchase service credit..." However, adding the term "or injury" after "illness" would eliminate ambiguity and help make the disability-related sections of the PERL more consistent with other provisions, as with the adjacent two sections, which relate to "injury or illness."

For the member's own non-work related leaves of absence, public employers generally do not distinguish between illness or injury when approving employee leaves; they are granted for medical or disability reasons regardless of their cause. Because employers typically do not distinguish between whether an employee's medical condition was caused by illness or injury, it is often difficult for CalPERS staff to obtain proper documentation to verify eligibility for purchase requests for leaves caused by non-work related illness, per Section 21002.

An employer's ability to certify eligibility for illness is further limited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law that protects individuals' health information and sets rules and limits on who can access and receive this protected information. Therefore clarifying that a members' eligibility to purchase service credit for an employer-approved leave includes those members recuperating from a serious injury in addition to a serious illness will make the PERL more consistent and ensure members are treated in an equitable manner, regardless of the cause of their medical condition.

This proposal would also standardize service credit purchases for approved leaves of absence caused by work-related illness or injury and non-work related illness or injury. This change is also consistent with the provisions of the Teachers' Retirement Law that allow members of the California State Teachers' Retirement System (CalSTRS) to purchase service credit for approved leaves of absence that qualify under the federal Family and Medical Leave Act (FMLA). Those provisions make no distinction between "illness" or "injury" in establishing the many terms and conditions that apply to employee leaves in general.

### **Improve Conformity with Registered Domestic Partnership Statutes**

In 2003, the California Domestic Partner Rights and Responsibilities Act extended the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005. Family Code (FC) 297 defines domestic partners as either same-sex couples or as opposite-sex couples with one partner age 62 or older, that are both at least age 18 and share a common residence. FC 299.2 also specifies that a legal union of two persons of the same sex, other than a marriage, which is validly formed in another jurisdiction, shall be recognized as a valid domestic partnership in California, regardless of whether it bears the name domestic partnership. Under FC 297.5, present, former, and surviving registered domestic partners have the same rights, protections and benefits as those granted to spouses.

Although CalPERS administers its benefits in compliance with the California Domestic Partner Rights and Responsibilities Act and has changed its forms, letters and publications to reference registered domestic partners, the lack of direct reference in many of the statutes administered by CalPERS has led to confusion among members and beneficiaries and disputes with CalPERS staff in certain situations, especially in the Judges Retirement Systems (JRS), the Legislators Retirement System (LRS), and the CalPERS 457 Deferred Compensation Plan, where no conforming statutory changes have been made.

This proposal would make the necessary changes to CalPERS, JRS, JRS II and LRS statutes to ensure it is clear that registered domestic partner, former registered domestic partner and surviving registered domestic partner will be treated in the same manner as "spouse."

### **Other Technical Changes**

This proposal also makes other technical wording and grammatical corrections and corrects or deletes inaccurate or obsolete code section references.

## **V. RISKS:**

This proposal will ensure CalPERS administers the PERL in an efficient manner by eliminating ambiguity that leads to conflicting interpretations and unnecessary confusion.

## **VI. STRATEGIC PLAN:**

This item supports the following strategic goals:

- Goal V: Provide sustainable pension benefit products and services responsive to and valued by members, employers, and stakeholders.
- Goal VI: Administer pension benefit services in a customer oriented and cost effective manner.

**VII. RESULTS/COSTS:**

Program Cost

None.

Administrative Costs

Minor and absorbable.

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